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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

JOSEPH PRIVETT, Plaintiff -against- **JEH JOHNSON**, Secretary, Department of Homeland Security; and **ALEJANDRO MAYORKAS**, Director, U.S. Citizenship and Immigration Services; and **HELAINE TASCH,** Field Office Director, Cincinnati Field Office, US Citizenship And Immigration Services, **JEAN THARPE**, Field Office Director, Vermont Field Offices, US Citizenship and Immigration Services **ERIC HOLDER**, U.S. Attorney General, US Department of Justice, Defendants.	COMPLAINT FOR MANDAMUS RELIEF Civ. No. 1:14CV714 J. DLOTT

Plaintiff, Joseph Privett, through undersigned counsel, alleges as follows:

INTRODUCTION

1. This is an individual action for mandamus seeking to compel Defendants, Department of Homeland Security ("DHS") Secretary Jeh Johnson, US Citizenship and Immigration Services ("USCIS") Director Alejandro Mayorkas, USCIS Cincinnati Field Office Director Helaine Tasch, USCIS Vermont Field Office Director Jean Tharpe and Attorney General Eric Holder to take action on an I-130 Petition for Alien relative filed by Plaintiff on or about April 29, 2013. The I-130 application is the first step in petitioning for a family member's Lawful Permanent Resident ("LPR") status. Plaintiff's ultimate goal is to obtain LPR status for his foreign spouse and to live and reside together as husband and wife. USCIS states their normal processing times for I-130 applications is 5 months. In the instant case the application has been processing for over 16 months.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), 5 U.S.C. §§ 555(b) & 706(1), of the Administrative Procedures Act ("APA"); 8 U.S.C. § 1329, Immigration & Nationality Act ("INA"), and 28 U.S.C. § 1361, regarding an action to compel an officer of the United States to perform his or her duty. Further this Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.
3. Costs and attorney fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412(d), *et. seq.*

VENUE

4. Venue is properly in this court pursuant to 28 U.S.C. §1391(e) as Plaintiff resides within the district under the jurisdiction of this court, the defendants are officers and employees of the United States of America and no real property is involved in this action.

PARTIES

5. Plaintiff Joseph Privett is a natural born US citizen. He is married to his foreign spouse Doris Privett. Due to her immigration status they currently live apart. She resides in Lagos, Nigeri and

he resides in Hamilton County, OH. On or about April 29, 2013 Mr.Privett filed an I-130, Petition for an Alien Relative for his alien spouse.

6. Defendant Jeh Johnson is the Secretary of DHS, and this action is brought against him in his official capacity. He is generally charged with enforcement of the INA, and is further authorized to delegate such powers and authority to subordinate employees of DHS. More specifically, the Secretary is responsible for delegating authority in the adjudication of the petition described above.
7. Defendant Alejandro Mayorkas is Director of USCIS, the agency charged with adjudicating I-130 applications. This action is brought against Mr. Mayorkas in his official capacity.
8. Defendant Helaine Tasch, is Field Office Director of the USCIS Cincinnati office. The Cincinnati field office is the local field office charged with adjudicating Plaintiff's I-130 petition. This action is brought against Ms. Tasch in her official capacity.
9. Defendant Jean Tharpe is the Field Office Director for the Vermont Field Office. On or about January 8, 2014 Plaintiff's I-130 application was transferred to the Vermont Field Office. This action is brought against Mr. Tharpe in his official capacity.
10. Defendant Eric Holder is the Attorney General of the United States, as such he is charged with enforcement of the INA, and further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. This action is brought against Mr. Holder in his official capacity.

STATEMENT OF FACTS

A. BACKGROUND

11. Mr. Privett is a US citizen, whom married his foreign spouse, Ms. Doris Privett. On or about April 29, 2013 he filed an I-130, Petition for Alien Relative, as the first step of his goal of eventually petitioning for her LPR status.
12. USCIS states its processing times for I-130 applications is 5 months.
13. Plaintiff's application has been pending for over 16 months with no decision.

STATUTORY FRAMEWORK

The Relevant Immigration Framework

14. Under the INA, United States citizens may petition for their spouses to be classified as "immediate relatives," who are therefore eligible for an immigrant visa and lawful permanent residence in the United States. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1154.

15. To petition for an immigrant visa on behalf of their spouse, the US citizen must file an I-130 Petition for Alien Relative with USCIS. 8 C.F.R. § 204.1(a)(1)(2009). If the adjudicator "determines that the faces stated in the petition are true and that the alien on behalf of whom the petition is made is an immediate relative," then the adjudicator "shall. . .approve the petition." 8 U.S.C. §1154(b).

16. Lawful Permanent Residency allows a foreign national to reside in the United States, to work here, and to travel in and out of the country with limited restrictions. 8 U.S.C. § 1101(a)(20); 8 C.F.R. §§ 274a.12(a)(1), 316.5(c)(1). As the name implies, that status is permanent—a lawful permanent resident may remain in the United States indefinitely, so long as the person abides by the nation's immigration laws. 8 U.S.C. § 1101(a)(20).

17. It is no overstatement to say that family unification is a central principle underlying our immigration system.

CAUSES OF ACTION

Mandamus & APA

18. Plaintiff brings this action under the Mandamus Act, 28 U.S.C. §1361, which allows for a writ of mandamus to be issued if the plaintiff has exhausted all other avenues of relief and the defendant owes him a clear, nondiscretionary duty. *Heckler v. Ringer,* 466 US 602, 616, (1984). The duty owed by the government must be "a legal duty which is a specific, plain ministerial act 'devoid of the exercise of judgment or discretion.' An act is ministerial only when its performance is positively commanded and so plainly prescribed as to be free from doubt." *Harmon Cove Condo Assoc. v. Marsh*, 815 F.2d 949, 951 (3rd Cir 1987).

19. Defendants have a non-discretionary duty to act on applications within a reasonable time. *Haidari v. Frazier,* No. 06-3215, 2006 US Dist. LEXIS 89177 (D. Minn. Dec. 8, 2006) (noting that while "the decision of whether to grant of deny an adjustment application is discretionary… Plaintiffs are only asking [the] Court to compel Defendants to make any decision."

20. In the instant case, the Defendant has a clear, nondiscretionary duty to adjudicate cases before it in a timely manner. The Defendant has manifestly been derelict in this duty. The instant matters have been before them for a period of over 8 months.

21. The Plaintiff also brings this action under the APA, which governs judicial review of agency decisions. The APA states that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702. "Agency action" includes the failure to act. 5 U.S.C. § 551(13). The APA also requires that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. §555(b). The reviewing court has the power to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1).

22. Mr. Privett has been injured in the failure of defendants to adjudicate his petition. He is a US citizen and entered into a lawful marriage with the love of his life, who happens to be a citizen of another country. The couple's life has been placed on hold while defendants wait on their application. Thus, in failing to adjudicate Mr. Privett's petition defendants are *de facto* denying him his right to marry and build a family with the person of his choosing injuring his fundamental rights as a US citizen.

23. Defendants have unreasonably and without substantial justification failed to perform their duty of considering these petitions in a timely fashion. Defendants have unreasonably, arbitrarily, and capriciously failed to perform their duty and a writ of mandamus is appropriate.

24. Plaintiff has exhausted any administrative remedies which may exist.

WHEREFORE, the Plaintiff respectfully prays that defendants be cited to appear herein, and the Court:

A. Assume jurisdiction of this case;

B. Compel the Defendants to decide the I-130 petition at issue here;

C. Should USCIS decide the I-130 petition at issue while this action is pending, that this Court maintain jurisdiction over this claim, so Plaintiff can move to amend the complaint pursuant to defendants' unlawful decision;

D. Grant Plaintiff's reasonable attorney fees;

E. Grant Plaintiff such other relief at law and in equity as this Court deems just and proper.

Dated:___________

Respectfully submitted,

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